



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor  
Anu Natarajan, Vice Mayor  
Bob Wieckowski  
Bill Harrison  
Suzanne Lee Chan

### City Staff

Fred Diaz, City Manager  
Harvey E. Levine, City Attorney  
Melissa Stevenson Dile, Deputy City Manager

Dawn G. Abrahamson, City Clerk  
Harriet Commons, Finance Director  
Marilyn Crane, Information Technology Svcs. Dir.  
Daren Fields, Economic Dev. Director  
Mary Kaye Fisher, Interim Human Resources Dir.  
Annabell Holland, Parks & Recreation Dir.  
Norm Hughes, City Engineer  
Jill Keimach, Community Dev. Director  
Bruce Martin, Fire Chief  
Jim Pierson, Transportation & Ops Director  
Jeff Schwob, Planning Director  
Suzanne Shenfil, Human Services Director  
Craig Steckler, Chief of Police  
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

## **NOTICE AND AGENDA OF SPECIAL MEETING CLOSED SESSION**

**DATE:**        **Tuesday, March 10, 2009**

**TIME:**        **6:00 p.m.**

**LOCATION:** **Fremont Room, 3300 Capitol Avenue, Fremont**

The City will convene a special meeting. It is anticipated the City will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding upcoming employee negotiations, as follows:

- 1) CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Melissa Dile, Deputy City Manager; Harvey Levine, City Attorney; Designated Representatives Diana Doughtie and Fran Buchanan as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Association of Management Employees  
Fremont Association of City Employees  
Operating Engineers  
Teamsters Local 856  
Fremont Police Association  
Professional Engineers and Technicians Association

- 2) CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Melissa Dile, Deputy City Manager; Harvey Levine, City Attorney; Designated Representatives Diana Doughtie and Fran Buchanan as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Fire Fighters  
Fremont Fire Fighters Battalion Chiefs

This Special Meeting is being called by Mayor Wasserman.



**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**MARCH 10, 2009**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances  
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes for the Work Session and Regular Meeting of February 17, 2009 and the Regular Meeting of February 24, 2009.*
- 2.3 **BAY STREET UTILITY UNDERGROUND**  
*Approval of Plans and Specifications and Award of Contract to the Lowest Responsible Bidder for the Construction of the Utility Underground and Service Conversions on Bay Street between Chapel Way and Fremont Boulevard, City Project 8289E (PWC)*

*Contact Person:*

<i>Name:</i>	<i>Paul Leung</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4512</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>pleung@fremont.gov</i>	<i>nhughes@fremont.gov</i>

*RECOMMENDATIONS:*

- 1. Approve the plans and specifications for the Bay Street Utility Underground and Electrical Service Conversions, City Project 8289E (PWC).*
- 2. Accept the bid and award the construction contract for the Bay Street Utility Underground and Electrical Service Conversions, City Project 8289E (PWC), to the lowest responsible bidder, MCH Electric, Inc., in the amount of \$518,282.90 and authorize the City Manager or his designee to execute the contract.*

**3. CEREMONIAL ITEMS**

- 3.1 Proclamation: Celebrating March 2009 as American Red Cross Month
- 3.2 Resolution: Honoring Gustavo Trejo for Responding to a Water Rescue in the San Francisco Bay
- 3.3 Resolution: Honoring IT Systems Analyst/Programmer Charles Caulfield for 20 Years of Service
- 3.4 Resolution: Honoring Police Sergeant Curtis Codey for 25 Years of Service
- 3.5 Resolution: Honoring Police Lieutenant Clarise Lew for 20 Years of Service

**4. PUBLIC COMMUNICATIONS**

- 4.1 Oral and Written Communications

**REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. See separate agenda (yellow paper).**

**PUBLIC FINANCING AUTHORITY – None.**

**CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR**

## 5. SCHEDULED ITEMS

### 5.1 URBAN HOUSING GROUP PROJECT – 3651 WALNUT AVENUE – CENTRAL BUSINESS DISTRICT

Public Hearing (Published Notice) to Consider a Planning Commission Recommendation to Approve a Central Business District Concept Plan Amendment, Preliminary and Precise Planned District, Density Bonus, Preliminary Grading Plan, Vesting Tentative Tract Map 7986, and a Street Abandonment Application for a Portion of California Street for the Development of a 4.1 Acre Site, in the Central Planning Area. The Proposed Project would Allow for the Development of 301 Residential Units, an Approximately 17,000 Square Foot Civic Park, and 1,200 Square Feet of Office/Commercial Space

#### Contact Person:

Name:	Wayne Morris	Jeff Schwob
Title:	Senior Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4729	510-494-4527
E-Mail:	wmorris@fremont.gov	jschwob@fremont.gov

#### RECOMMENDATIONS:

1. Hold public hearing.
2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as shown in Exhibit “A”, and find that this action reflects the independent judgment of the City of Fremont.
3. Find PLN2009-00009 is in conformance with the relevant goals contained in the Central Business District Concept Plan as enumerated within the staff report.
4. Adopt a resolution approving PLN2009-00009 to amend the Central Business District Concept Plan in conformance with Exhibit “C” (CBD Concept Plan Amendment).
5. Waive full reading and introduce an ordinance approving Precise Planned District P-2009-9, as shown on Exhibit “D”, and adopting Exhibit “E” (Project Development Plans), together with the findings and conditions contained in Exhibit “1” as the precise Plan for P-2009-9;
6. Approve Tentative Tract Map 7986, and Preliminary Grading Plan as depicted in Exhibit “E” (Vesting Tentative Tract Map 7986 and Preliminary Grading Plan), based on the findings and subject to the conditions of approval contained in Exhibit “2” and Exhibit “3”, respectively.
7. Direct staff to prepare and the City Clerk to publish a summary of the above ordinance outlined in recommendation No. 5.

### 5.2 GENERAL VACATION OF A PORTION OF CALIFORNIA STREET IN THE CENTRAL PLANNING AREA

Public Hearing (Published Notice) to Consider a General Vacation to Abandon a Portion of California Street Located Between Beacon Avenue and Walnut Avenue in the Central Planning Area (PLN2009-00009) and if Approved to Authorize Conveyance of the Vacated Portion of the Street to the Urban Housing Group

Contact Person:

Name:	Wayne Morris	Jeff Schwob
Title:	Senior Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4729	510-494-4527
E-Mail:	wmorris@fremont.gov	jschwob@fremont.gov

RECOMMENDATIONS:

1. Hold public hearing.
2. Find the proposed General Vacation (PLN2009-00009), as depicted and described on Exhibit "A" is in conformance with the General Plan, for the reasons stated in the body of this report.
3. Find PLN2009-00009, as depicted and described on Exhibit "A," fulfills the applicable criteria set forth in Section 8324 of the Streets and Highways Codes in that the portion of California Street to be vacated is not now, nor will it in the future, be required for public street purposes.
4. The General Vacation shall conform to Exhibit "A." all conditions set forth herein, and all the conditions of approval of Planned District P-2009-9.
5. Adopt a resolution rescinding prior Council resolution 2007-02 and conditionally vacating the portion of California Street as described and depicted in Exhibit "A. The vacation is conditional and shall not be recorded and shall not be effective until all of the following have occurred:
  - A. The Urban Housing Group's Walnut Avenue Project Final Tract Map 7986, including the dedication to the City of an approximately 1000 square foot parcel of land along Beacon Avenue, is approved by the City Council and is ready to be recorded.
  - B. The Developer has executed and delivered to the City an irrevocable offer of dedication in fee for the Civic Park an approximately 17,600 square foot parcel of land between Beacon Avenue and Walnut Avenue for park and emergency vehicle access purposes.
  - C. The Developer has executed and delivered an agreement satisfactory to the City Attorney to provide maintenance for the Civic Park during the time that the project is a rental project and to provide a cash contribution in the amount of \$1,500,000, plus consumer price index adjustments, to be used for maintenance and capital replacement purposes when the project becomes a for sale project.
  - D. The Developer has executed and delivered to City, at no cost to City, an easement granting the City a temporary roadway and utility easement to allow the public and public utility agencies the right to use and to maintain the roadway, sidewalk and utilities existing in the vacated portion of California Street until such time as the Developer removes and reconstructs the road, sidewalk and utilities as permitted by the City and other public agencies or utilities.
6. Find that the vacated area is not needed by the public and authorize the City Manager or designee to execute a deed conveying the vacated portion of California Street as shown on Exhibit "A" to Urban Housing Group after the conditions to the street vacation have been satisfied.
7. Direct that the resolution vacating a portion of California Street, the Urban Housing Group Walnut Avenue Project Final Tract Map 7986, the deed conveying title to the



vacated portion of the California Street right-of-way to the Developer, the irrevocable offer of dedication of the area designated as Civic Park for park and emergency vehicle access purposes, and the temporary easement allowing public use of the vacated California Street shall be deposited into an informal escrow with the City and shall be recorded together in the following order:

- a. Resolution vacating a Portion of California Street
- b. Deed conveying the vacated portion of California Street to the Urban Housing Group
- c. Final Map for the Urban Housing Group Walnut Avenue Project Tract 7986
- d. Irrevocable Offer of Dedication from Developer to City of the area designated as Civic Park for park and emergency vehicle access purposes
- e. Temporary Easement from the Urban Housing Group to the City for public use of the vacated portion of California Street.

## **6. REPORT FROM CITY ATTORNEY**

### **6.1 Report Out from Closed Session of Any Final Action**

## **7. OTHER BUSINESS**

### **7.1 CONSIDERATION OF “ENHANCED LANDSCAPING” DESIGN ALTERNATIVE FOR THE WASHINGTON BOULEVARD / PASEO PADRE PARKWAY GRADE SEPARATION PROJECT**

City Council Consideration to Add Enhanced Landscaping for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project at a Cost of \$ 1,171,245

#### **Contact Person:**

Name:	Afshin Abtahi	Jim Pierson
Title:	Project Manager	Director
Dept.:	Transportation & Operations	Transportation & Operations
Phone:	510-494-4724	510-494-4722
E-Mail:	aabtahi@fremont.gov	jpierson@fremont.gov

RECOMMENDATION: Direct staff to continue to install the Base Landscaping included in the current construction contract for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project and not issue a contract change order to add Enhanced Landscaping.

### **7.2 EXTENSIONS TO EXISTING BUILDING PERMITS AND APPLICATIONS**

Consideration of an Uncodified Ordinance of the City of Fremont Authorizing Extensions to Existing Building Permit Applications and Building Permits

#### **Contact Person:**

Name:	Paul Kermoyan	Jill Keimach
Title:	Deputy Director	Director
Dept.:	Community Development	Community Development
Phone:	510-494-4744	510-494-4767
E-Mail:	pkermoyan@fremont.gov	jkeimach@fremont.gov

RECOMMENDATIONS:

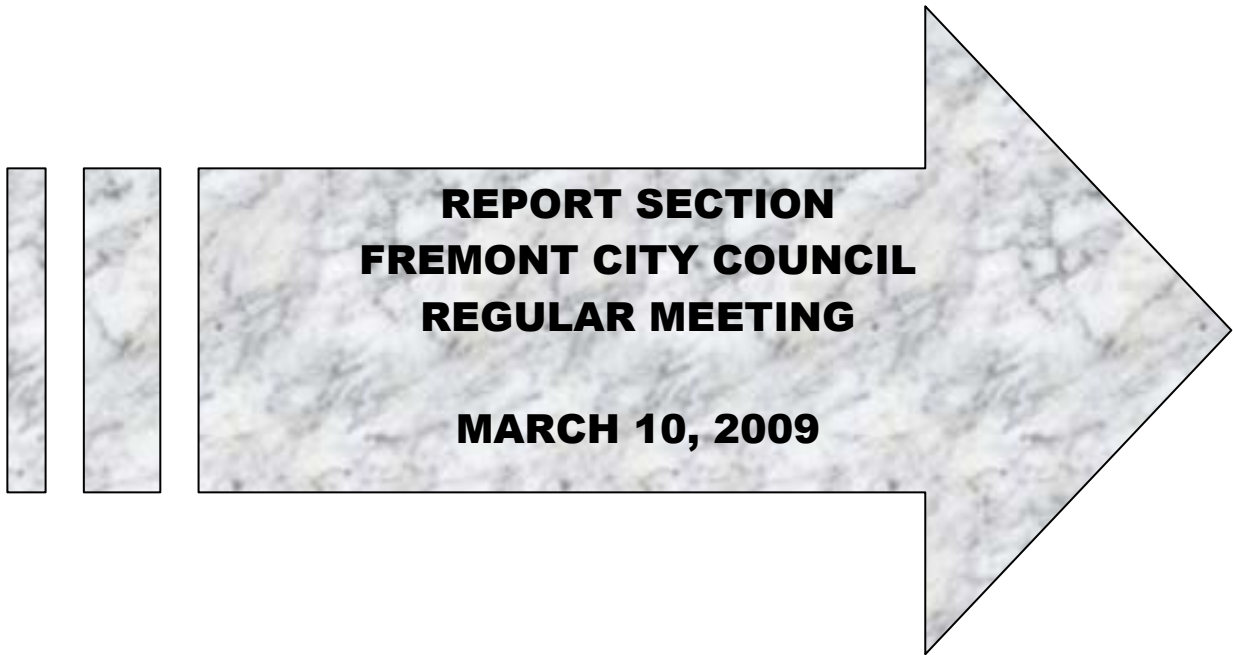
1. Hold the public hearing.
2. Find the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15061 (B) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
3. Waive full reading and introduce the uncodified ordinance.
4. Adopt a motion directing the City Attorney to prepare a summary of the ordinance and the City Clerk to post and public the summary in accordance with Government Code Section 36933 (C)(1).
5. Direct the Clerk to publish notice of a public hearing to consider adoption of the ordinance in accordance with Government Code Section 6066 and 50022.3.

**8. COUNCIL COMMUNICATIONS**

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

**9. ADJOURNMENT**



**REPORT SECTION  
FREMONT CITY COUNCIL  
REGULAR MEETING**

**MARCH 10, 2009**



### **\*2.3 BAY STREET UTILITY UNDERGROUND**

#### **Approval of Plans and Specifications and Award of Contract to the Lowest Responsible Bidder for the Construction of the Utility Underground and Service Conversions on Bay Street between Chapel Way and Fremont Boulevard, City Project 8289E (PWC)**

**Contact Person:**

Name:	Paul Leung	Norm Hughes
Title:	Associate Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4512	510-494-4748
E-Mail:	pleung@fremont.gov	nhughes@fremont.gov

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**Note:** Companion item on Redevelopment Agency agenda

**Executive Summary:** The purpose of this report is to recommend that the City Council approve the plans and specifications and award the contract for Bay Street Utility Underground and Service Conversions, City Project No. 8289E (PWC), to the lowest responsible bidder, MCH Electric, Inc., in the amount of \$518,282.90. Staff also recommends appropriating of \$104,300 from the Bay Street Streetscape Project, City Project No. 8509 (PWC), for the service conversion work.

**BACKGROUND:** Utility undergrounding funds are apportioned annually to cities through Pacific Gas and Electric (PG&E) based on California Public Utility Commission (PUC) Rule 20A. This rule returns money to cities for undergrounding of utilities based on the number of customers served by overhead lines within the City. The City Council adopted a Five-Year Utility Underground Program in conjunction with the utility companies to establish the City's priorities for undergrounding projects. Bay Street utility undergrounding is in the current Five-Year Utility Underground Program.

At the City Council/Redevelopment Agency Regular Meeting on October 26, 2004, the City Council adopted an ordinance for the formation of Utility Underground District No. 36 for Bay Street between Fremont Boulevard and Chapel Way. The majority of the costs of undergrounding the utilities will be funded by PG&E through California Public Utility Commission Rule 20A.

Due to other commitments and staffing shortage, PG&E was not available to design the undergrounding work as done on previous Rule 20A projects. In order to avoid further delays, staff hired an outside consultant, UDI-Tetrad, to do the design and PG&E agreed to reimburse the City for the cost of the design work.

**Rule 20A Process:** The PUC Rule 20A funds are used to finance the PG&E portion of utility underground improvements within public rights-of-way. There are also provisions for a portion of the Rule 20A funds to be expended on some underground improvements on private property required as a result of the Utility Underground District. AT&T and Comcast will pay the cost to underground their respective facilities in conjunction with the project. The estimated construction cost of the PUC Rule 20A portion of the utility underground work is \$316,100 for this project.

The design costs for the underground portion of work (UDI-Tetrad Consultants and City staff) and construction inspection and surveying costs are also reimbursable through the Rule 20A funds. The total amount for this portion of the work is \$178,400. The total reimbursement from the utility companies is \$494,500.

**Funding On-Site Connection Costs:** PUC policies allow the City to direct PG&E to utilize Rule 20A funds to pay for a portion of the onsite connection costs, including no more than 100 feet of each property owner's underground lateral service (trenching and conduits) and up to \$1,500 per parcel toward the electrical meter conversion costs. Based on the 22 parcels within the project limits, staff estimates that the on-site connection costs will be \$125,400. The amount qualified for reimbursement through Rule 20A funds is estimated to be \$33,000.

The remainder of the on-site connection costs must be covered by other sources. For Underground Utility District No. 36, the on-site connection costs not eligible for Rule 20A funding are estimated to be \$92,400 (\$125,400-\$33,000). In a companion item, the Redevelopment Agency Board will be asked to appropriate \$92,400 from the Bay Street Streetscape project to cover these costs, based on a finding that the use of these funds enhances the aesthetic appearance of Bay Street and is in conformance with the Redevelopment Plan for the area.

**Funding Temporary Street Light Costs:** Once the utilities are underground and the poles are removed, several street lights that were attached to the poles will also be removed. The Utility Underground project will install temporary street lights that will remain in operation until the Bay Street Streetscape project constructs the permanent lights. These costs are not eligible for Rule 20A funds. In a companion item, the Redevelopment Agency Board will be asked to appropriate \$11,900 from the Bay Street Streetscape project to cover these costs.

**Bid Results:** Bids were opened on January 27, 2009. Bids were received as follows:

<b><i>BIDDER</i></b>	<b><i>Total Bid Amount</i></b>		<b><i>Rank</i></b>
MCH Electric, Inc.	\$518,282.90	*	1
Casey Construction, Inc.	\$534,217.00		2
A Teichert & Son Inc. DBA Angelo Utilities	\$552,400.90		3
Valley Utility Services	\$570,846.66		4
Smith Denison Construction Co.	\$596,391.00		5
K.S. Wood Construction Co. Inc.	\$625,993.00	*	6
Terno, Inc.	\$628,134.00		7
Triple S Electric Co.	\$650,840.00		8
Emard Engineering	\$663,754.00		9
Maxistone, Inc.	\$697,022.00		10
Tennyson Electric, Inc.	\$731,224.00		11
W.R. Forde Associates	\$737,829.00		12

<b>BIDDER</b>	<b>Total Bid Amount</b>		<b>Rank</b>
Norwood Construction	\$749,464.00		13
Pacific Underground Construction, Inc.	\$751,948.00		14
West Valley Construction Company, Inc.	\$754,592.00		15
Ranger Pipelines, Inc.	\$810,405.00		16
St. Francis Electric	\$820,521.00		17
D & D Pipelines, Inc.	\$879,930.00		18
Daleo, Inc.	\$945,072.50		19
Lewis and Tibbitts, Inc.	\$978,344.00		20
C.E. Harris, Inc.	\$1,110,236.00		21

\*Mathematically corrected  
Engineer's estimate: \$700,000

The low monetary bidder, MCH Electric, Inc., is a responsive and responsible bidder because they have experience in this type of work and their bid documents are in order.

**Bid Protest:** The City received a bid protest to the first apparent lowest bidder, MCH Electric Inc. The protest was received from the second lowest bidder, Casey Construction, Inc. Casey Construction, Inc., argued that MCH Electric Inc., which possesses a C-10 specialty electrical contractor license, is not qualified to perform some required elements of this project for which a subcontractor was not listed, such as the installation of sidewalks, asphalt, water and sewer services, and bore and jack pipe. State law allows specialty contractors to contract for and perform work in crafts or trades other than the one they are licensed in if that work is "incidental and supplemental" to performance of the work which the contractor is licensed. Staff consulted the Contractors State Licensing Board (CSLB) for its opinion on this matter. The Board investigated the situation, and while they do not issue written responses to inquiries, one of their investigators, Dorothea La-Barr, has informed City staff that having a C-10 license is sufficient for MCH Electric, Inc., to be deemed qualified to perform this project because the work stated above is considered to be incidental and supplemental work. Therefore, staff is recommending that Council award this construction contract to MCH Electric, Inc.

**Project Costs:** The following is an estimate of the project costs:

Staff – Design/Design Administration (Meter Conversions)	\$30,000
Staff – Design/Design Administration (Utility Undergrounding)	\$30,000
Design Consultant (UDI-Tetrad)	\$40,400
Construction Cost (Low Bid) (Includes \$65,000 Construction Contingency)	\$518,283
Staff – Construction Inspection, Administration & Surveying	<u>\$108,000</u>
<b>TOTAL Estimated Construction Costs</b>	<b>\$726,683</b>

**Project Funding:**

Fund 502	Capital Improvement – Outside Source (\$1,500 per meter)	\$33,000
Fund 508	ACTIA Measure B Funds	\$100,000
<i>Fund 951</i>	<i>Redevelopment Agency Funds (Meter Conversion &amp; Temporary Street Lights)</i>	<i>\$104,300</i>
	<i>Reimbursement from Utility Companies per Rule 20A funding</i>	<u><i>\$494,500</i></u>
<b>TOTAL Estimated Available Funding</b>		<b>\$731,800</b>

Based on the contract amounts and project cost estimates, there are sufficient funds budgeted for this project.

**Environmental:** The Bay Street Utility Undergrounding and Electrical Service Conversions project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302 (d) (conversion of overhead electric utility distribution system facilities to underground) because the project is a minor alteration to an existing public facility.

**Spending Limitation Impact (Article XIII B):** None.

**ENCLOSURE:** Exhibit “A” Utility Underground District No. 36 Boundary Map

**RECOMMENDATIONS:**

1. Approve the plans and specifications for the Bay Street Utility Underground and Electrical Service Conversions, City Project 8289E (PWC).
2. Accept the bid and award the construction contract for the Bay Street Utility Underground and Electrical Service Conversions, City Project 8289E (PWC), to the lowest responsible bidder, MCH Electric, Inc., in the amount of \$518,282.90 and authorize the City Manager or his designee to execute the contract.



## 5.1 URBAN HOUSING GROUP PROJECT – 3651 WALNUT AVENUE – CENTRAL BUSINESS DISTRICT

**Public Hearing (Published Notice) to Consider a Planning Commission Recommendation to Approve a Central Business District Concept Plan Amendment, Preliminary and Precise Planned District, Density Bonus, Preliminary Grading Plan, Vesting Tentative Tract Map 7986, and a Street Abandonment Application for a Portion of California Street for the Development of a 4.1 Acre Site, in the Central Planning Area. The Proposed Project would Allow for the Development of 301 Residential Units, an Approximately 17,000 Square Foot Civic Park, and 1,200 Square Feet of Office/Commercial Space**

### **Contact Person:**

Name:	Wayne Morris	Jeff Schwob
Title:	Senior Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4729	510-494-4527
E-Mail:	wmorris@fremont.gov	jschwob@fremont.gov

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**Executive Summary:** The City Council is being asked to consider a Central Business District Concept Plan Amendment, a Precise Planned District, Density Bonus, Vesting Tentative Tract Map 7986, Preliminary Grading Plan and a Street Abandonment for a portion of California Street, for development of 301 dwelling units, a 17,000 square foot Civic Park and approximately 1,200 square feet of office/commercial space at 3651 Walnut Avenue. On February 12, 2009 the Planning Commission reviewed the proposal and recommended by a unanimous vote of 5-0-1-0-1 (with one Commissioner abstaining and one seat vacant) that the City Council approve the requested entitlements and Mitigated Negative Declaration and Mitigation Monitoring Plan based on the findings and subject to the conditions of approval contained in Exhibits “1”, “2”, and “3”.

**BACKGROUND:** On November 6, 2001, the City Council adopted the Central Business District Concept Plan, which provides a defined vision, goals and outlines the direction for future development within the Central Business District.

To implement the vision in the plan over its 20-year time frame, the plan divided the CBD into several distinct subdistricts, each with a slightly different concept for the type and character of development. At the heart of the CBD is the “Focus Area” the portion of the CBD envisioned to become a more traditional downtown area, with retail uses and a “Main Street.” The Focus Area is bounded by Fremont Boulevard, Paseo Padre Parkway, Mowry Avenue and Walnut Avenue. Capitol Avenue is envisioned to become the heart of the Focus Area, ultimately extending to Fremont Boulevard, to provide visibility and access to the core area of the downtown. It is within the Focus Area that the project site is located.

2000 Project: In December 2000, a previous applicant received approval for the development of approximately 220,088 square feet (SF) of commercial office space and associated site improvements as it pertained to the subject site. The construction of the project was to be completed in two phases. Phase I of the project was to include two, four-story buildings fronting California Street and Beacon Avenue. Building One was to be a four story structure with a building footprint of approximately 13,500 SF for a total area of 52,510 SF. Building Two was also proposed to be a four story building with a total floor

area of approximately 53,549 SF. Phase II of the project was to include a six-story building fronting Walnut Avenue with a total floor area of approximately 107,273 SF. A five level parking structure was also included as part of the Phase II improvements. After the entitlements were approved, the developer never proceeded any further with the project. The approval of this project was rescinded through the approval of the 2006 SummerHill Project.

2006 Project: In December 2006, the City Council on recommendation of the Planning Commission, approved a Precise Planned District, Vesting Tentative Tract Map 7836, a Preliminary Grading Plan and a Street Abandonment Application for a portion of California Street to allow SummerHill Homes to develop 227 condominium dwelling units, a 9,000 SF Civic Park and approximately 5,000 SF of commercial space at 3651 Walnut Avenue. The applicant was proposing to construct two primarily residential buildings (4/5 stories) that would have been bisected by the extension of State Street through the project site from Beacon Avenue to Walnut Avenue. A Civic Park was to be constructed in the middle of the State Street extension. A copy of the approved site plan (SummerHill Homes - Walnut Avenue Condominiums) is enclosed as Informational Item 3. The project did not move forward to the construction phase because of the current economic downturn. The main differences between the approved 2006 project and the current proposal is that The Urban Housing Group Project would allow a net increase of 74 units and that the State Street extension from Beacon Avenue to Walnut Avenue is not proposed for a vehicular road. Instead it is proposed as a civic park. Staff is recommending, through the conditions of approval for this project (PLN2009-00009), that the SummerHill Project approval in 2006 (PLN2005-00256) be rescinded.

2008 Civic Park Recommendation: In December 2008, the Recreation Commission was provided with an update (Recreation Commission Staff Report) as it related to The Urban Housing Group Project and, in particular, the proposed Civic Park component of the development. The Commission was advised that design and function of the Urban Housing Group's proposed Civic Park was very similar to the SummerHill proposal that they had seen in late November 2006. The applicant advised that they would develop the Civic Park as a "turn key project" for the City, for which they are requesting to receive a credit for park dedication and park facilities fees. Staff also noted that a funding mechanism was proposed to address the maintenance and capital replacement costs associated with the Civic Park. The Recreation Commission recommended that the City Council accept Lot A on Vesting Tentative Tract Map 7986 as a public park and that the proposed preliminary design of the Civic Park be approved.

The Planning Commission continued discussion of the project from their January 22, 2009 meeting until February 12, 2009, as they requested Economic Development staff be present to discuss the retail portion of the proposed project. The Commission requested Economic Development staff to discuss the retail strategy for the CBD and how this project fits into the overall vision/strategy for the CBD. After hearing from staff and the community on February 12, 2009, the Planning Commission recommended the City Council approve the project and further allow the 1,200 square feet of office/commercial to be converted to live/work space, if necessary in the future.

**Project Description:** The applicant, Urban Housing Group, is requesting a Central Business District Concept Plan Amendment, Precise Planned District, Density Bonus, Vesting Tentative Tract Map 7986, Preliminary Grading Plan and a Street Abandonment for a portion of California Street, for the potential development of 301 dwelling units, a 17,000 SF Civic Park and approximately 1,200 SF of office/

commercial space at 3651 Walnut Avenue. The proposed project development is summarized, as follows:

1. Dwelling Units: Two (2) primarily residential buildings are being proposed through this project. The proposed structures are four stories in height (approx. 50'). The internal garage structure is proposed to be a seven level garage (approx. 60'). Although the garage is higher than the residential structure, due to the placement of the garage within the structure, the visual height difference will be minimal. The applicant is proposing nine different floor plans to accommodate the targeted market as follows:
  - Five one-bedroom floor plans ranging in size from 726 SF to 831 SF (200 units).
  - Four two-bedroom floor plans ranging in size from 1,049 SF to 1,245 SF (101 units).
2. Parking Spaces.
  - Off-Street Parking: A total of 513 parking spaces will be provided within Building A. The parking spaces within Building A will support all of the proposed residential units. Parking for 100 bicycles is also proposed within the parking garage.
  - On-Street Parking: A total of 31 on-street parking spaces are being proposed within the public right-of-ways of Walnut Avenue, California Street and Beacon Avenue.
3. Open Space: All residential units on the ground floor and second floor have either a patio or balcony. Approximately 19,200 SF of Common Open Space is being provided within the project, with the most significant amount provided at the Club House Facility (pool/fitness facility - 7,600 SF).
4. Landscaping. A variety of trees, shrubs, flowers and ground cover are proposed. In addition, new street trees will be installed to further enhance the streetscape appearance on Walnut Avenue, California Street, and Beacon Avenue.
5. On-Site Private Amenities. Various courtyards, which serve as social zones in the common open space areas, a pool, spa, fitness facility and a Club House are some of the amenities proposed for the future residents of the development.
6. Circulation/Site Access. The parking garage is proposed to be located within Building A, which will be accessed from Beacon Avenue. Pedestrian access is provided from Beacon Avenue, California Avenue, Walnut Avenue, and from the Civic Park via the public sidewalk and adjacent walkways. Residents will be able to access the parking garage from ground floor and from the pedestrian bridges that connect the two buildings at the third and fourth level over the Civic Park.
7. Civic Park. The applicant is proposing to develop and dedicate a 17,000 SF parcel (turn key park) to the City as a Civic Park designed to encourage pedestrian activity within the development as well as the City as a whole. The park is proposed to include unique features such as a movie screen, artistic water features, benches, tables, and lights.
8. Office/Commercial Space: The applicant proposes to develop approximately 1,200 SF of office/commercial space at the new intersection of State Street and Walnut Avenue.
9. Project Type: The applicant is proposing to develop a rental project initially, but at some time in the future, depending on the for-sale market, it would become a condominium project and the units would be sold.

### **Project Analysis**

**General Plan Conformance:** The General Plan land use designation for the project site is Central Business District. Land Use Policy LU 2.6 states the following: "Development of the CBD should be guided by a design and development plan which identifies a limited core area for very high intensity development, and other sub-areas as necessary or appropriate. Projects within one-half mile of the BART Station should be high intensity, or be phased and designed so as not to preclude the long-term

achievement of a high intensity core area.” The design and development plan referred to in the above Land Use Policy is the Central Business District Concept Plan, which was adopted by the City Council in November 2001.

The CBD Concept Plan outlines specific goals which were used to formulate the overall plan. It is these goals that staff has reviewed and analyzed to ensure that the proposed project achieves the purpose and intent outlined in the CBD Concept Plan. The following is an analysis of some of the key goals and how this project implements the following CBD Concept Plan goals:

**Concept Plan Goal 1: Create a recognizable and memorable Downtown which people can take pride in, and to which people want to go.**

The Concept Plan indicates that one of the greatest disadvantages of the Central Business District is the lack of a definable downtown area. The Concept Plan states that one way to resolve this is by developing a “main street” to be constructed on Capitol Avenue, extending to Fremont Boulevard, which is to become the major retail center for the Central Business District. The Urban Housing Group proposes to develop a Civic Park which will provide a direct perpendicular route for pedestrians from the project site to Capitol Avenue. The office/commercial space and clubhouse facility are proposed to anchor the corners of Beacon Avenue and the entrance to the Civic Park. The ground floor units along the Civic Park have been designed to accommodate live/work units, which are envisioned to encourage more pedestrian activity/vibrancy than typical residential units. The proposed plan also provides for a Civic Park similar in design to the central commons in the Santana Row project in San Jose, although at a smaller scale with much less retail space. At the entrances to the Civic Park, specimen trees and other architectural features are proposed to welcome pedestrians into the park as well as providing a memorable entry feature into the development and the CBD Focus Area beyond. Therefore, staff suggests that the above referenced goal will be implemented through the proposed project to allow high density residential housing, a Civic Park, a limited amount of office/commercial space and live/work units.

**Concept Plan Goal 2: Create a Downtown comprised of a mix of land uses.**

The project proposes a variety of land uses which will help distinguish the development within the CBD. While this project can help to initiate the goals of the CBD Concept Plan, due to its location on the edge of the Focus Area, it is not a suitable site to sustain a large amount of retail/commercial development.

The CBD Concept Plan encourages a mix of uses throughout the CBD, which will in turn create a vibrant downtown area. The ground floor retail space proposed at the corner of Beacon Avenue and the Civic Park would provide a valuable opportunity for a neighborhood-scale office/commercial space which could focus on the number of residents within the development. The Civic Park could host small gatherings for the public, such as outdoor art shows or neighborhood farmers market, and other activities that could be programmed within the central open area. Staff sees the Civic Park as an extension of the surrounding sidewalk network, adjacent commercial space, and an area where residents of Fremont can sit and enjoy the surrounding environment.

The proposed 301 residential units will house future consumers for both the office/commercial component proposed within the project as well as the retail developments throughout the CBD.

Although the proposed project is primarily a residential project with a very limited amount of office/commercial space, staff believes that strategically located residential projects, such as the Urban Housing Group proposal, will help the City achieve the CBD vision to create an active and vibrant downtown. It will take multiple projects within the CBD, however, to create the vibrancy and activity that is envisioned within the CBD.

### **Concept Plan Goal 3: Improve streetscape design in the CBD.**

The CBD Concept Plan envisions improving the streetscape throughout the CBD, including narrowing some of the wider streets. The project design concept is to modify the southern half of Beacon Avenue adjacent to the project site. Diagonal parking, which will serve visitors and the office/commercial space, is proposed along Beacon Avenue, with a pedestrian-friendly edge. The proposed design of Beacon Avenue will make it more pedestrian-oriented and encourage pedestrian circulation towards State Street and Capitol Avenue. Walnut Avenue is proposed to be redesigned to add parallel parking, a 10 foot wide sidewalk, bulb-outs at the corner and street trees. Finally, California Avenue is proposed to be narrowed from 102 feet to 72 feet and improved to encourage pedestrian movement along the street. All streets would be enhanced with tree grates and street trees to create a more urban environment.

With the implementation of the above noted site improvements, staff believes that the requested entitlements to develop a high density primarily residential project, a Civic Park and a limited amount of office/commercial space on the subject site would achieve Concept Plan Goal 3.

### **Concept Plan Goal 4: Improved amenities for pedestrians in the Downtown focus area.**

The proposed Civic Park provides an opportunity to break up the large block between California Street and Liberty Street. With the development of a Civic Park, pedestrians will be able to access State Street, Walnut Avenue and the future downtown retail areas more easily from the south side of the project site. The proposed Civic Park is envisioned to be an outdoor room where people can sit, relax, socialize and enjoy the area. These spaces are also areas where assembly activities, such as outdoor concert and activities, fairs and art festivals, could occur over specified periods of time. The Civic Park would be programmed by the Park and Recreation Department. The proposed Civic Park and overall project would improve amenities for pedestrians in the area.

### **Concept Plan Goal 5: Encourage a network of strategically-placed public and private parking facilities.**

On-street parking and easily accessible parking structures are encouraged in the CBD. Parallel parking is proposed on Walnut Avenue and California Street, while Beacon Avenue is proposed to have diagonal parking. The majority of the parking is located on-site within an at-grade private parking structure located within Building A. The access point for the garage is located on Beacon Avenue. The retail customers would likely utilize the parking spaces provided on Beacon Avenue.

**CBD Concept Plan Amendment:** The proposed CBD Concept Plan Amendment, as outlined on Exhibit "C, C-1, C-2, C-3, & C-4," is very general in nature. All of the proposed amendments relate to either revising text and/or diagrams within the CBD Concept Plan to reflect the applicants proposal to

remove the State Street extension as a public road through the site from Beacon Avenue to Walnut Avenue.

### **Zoning Analysis**

**Density Bonus:** The CBD Concept Plan requires the subject site achieve a minimum density of 50 dwelling units per acre (du/ac) but allows up to 70 du/acre. Because 73 dwelling units per acre are proposed, the applicant is requesting a density bonus pursuant to Article 21.8 of the Fremont Municipal Code. The proposed project qualifies for a density bonus because it meets the criterion of providing at least 10 percent of the total units of a newly constructed condominium project or planned development as target units affordable to moderate income households. The project proposes to provide 10% of the units affordable to the moderate-income households and 5% to low-income households, as described under the Inclusionary Housing Section of this report. The table below summarizes the density bonus.

Urban Housing Density Bonus for Moderate Income Target Units			
Proposed % Target Units	Bonus for first 10% of Target Units	Additional Bonus for each 1% increase in Target Units	Total Maximum Density Bonus (not to exceed 40%)
15%	5%	1% X 5 = 5%	10%

Total Maximum Units Permitted with 10% Density Bonus: 70 du/ac + 10% density bonus = 77 du/ac

77 du/ac X 4.13 ac = **318 units** are the maximum number of units permitted with density bonus.

Based on the calculation above, the proposed 301 units at a density of 73 dwelling units per acre can be permitted on the site as it is less than the maximum 318 units permitted with a density bonus potential of up to 10 percent.

**Parking:** The Fremont Municipal Code (FMC) requires units with one bedroom to have one covered space per unit for residents, plus 0.5 uncovered spaces per unit designated for guest parking. The Code also requires units with two or more bedrooms to have one covered space per unit for residents, plus 0.5 uncovered spaces per unit for residents, and 0.5 uncovered spaces per unit designated for guest parking. Urban Housing Group is proposing 301 units (291 residential units and 10 Live/Work units). The 10 Live/Work units fronting the Civic Park would require an additional 1 uncovered parking space for guest parking per unit. The FMC also requires office/commercial uses to provide 1 parking space per 300 SF of floor area.

**Residential Parking:** The required parking would be 352 spaces for the residential units plus an additional 151 spaces for guests. As noted above, up to 10 additional spaces would be required for the live/work units. Thus the total required equals 513 spaces. The developer is providing 502 parking spaces in its parking structure, including 14 for motorcycles, plus 100 bicycle spaces. The Zoning Ordinance allows for a credit of one auto space per eight bicycle spaces. This yields a total of 514 spaces, thus the residential portion of the project meets the parking spaces requirement as prescribed by the FMC. The project will provide standard and compact parking spaces, which are all within the

required standards outlined in the FMC. As noted above, Urban Housing will provide a total of 100 bike parking spaces within the project, which is well in excess of what the City typically requires. The first level (street level) of the parking garage will not be gated which will allow visitors to access the guest parking spaces, however, access to other levels of the parking structure will be gated.

**Retail Parking:** The applicant is not providing any on-site parking spaces for the 1,200 SF of office/commercial space. At 1 space per 300 SF of commercial floor area, 4 parking spaces are required for the office/commercial space proposed in the project. However, a total of 31 on-street parking spaces (Walnut Avenue, California Street and Beacon Avenue) are being proposed with the project, which will be more than sufficient to meet the needs of the future office/commercial tenants. It should also be noted that the CBD Concept Plan speaks to various parking reductions as a way to create the urban environment envisioned for the CBD. One way to achieve this goal is to share parking where possible. This is possible when the peak parking demand for one use is in the evening while another peak time is during the day time. Thus, staff recommends a Finding for elimination of the parking requirement for the office/commercial space, due to the on-street parking that is proposed and the project's proximity to BART.

**Inclusionary Housing:** The applicant is required to meet the City's Inclusionary Zoning requirement through the provision of 15% of the units being allotted as Below Market Rate (BMR) units. The project will need to provide 45 BMR units. The applicant has committed to providing the required 45 units and is required to work with the City's Housing staff to identify the specific BMR units within the project. The applicant proposes to exceed the level of affordability within the project from 15% moderate-income (110% of Area Median Income (AMI)), to 10% of the units set aside for moderate income households and 5% set aside for low income households(60% AMI). The BMR Master Developer Agreement will include the following provision: "If the units are initially rented, then 10% of the units (30 apartment units) shall be set-aside for moderate income levels and 5% (15 apartment units) shall be set-aside for low-income households. Units initially rented shall be restricted at affordable rental rates for the period rented. At the time the project converts to for-sale owner occupied units, the inclusionary units (10% moderate and 5% low income) shall be further restricted for a minimum of 30 years (Condition A-22).

**Building Architecture:** The project proposes a mix of two complementary architectural styles combined together for both buildings, so that each building's style elements appear to have been built over time. The design intent of the building architecture is to enhance the pedestrian experience along the street edges and the Civic Park at the center of the development.

**Building A** has a combination of traditional and contemporary architectural styles with the corners of the building accentuated with strong contemporary elements. The building is organized around a parking garage and two passive, garden courtyards with landscaped paseos that are publicly linked to California Street, Beacon Avenue, and Walnut Avenue. The two styles are differentiated by compatible earth tone color schemes, each complemented by a different roof massing treatment, expressed with flat roofs for the contemporary and pitched roofs for the traditional. The raised ceiling heights at the loft units provide varying heights at certain contemporary elements throughout the project to articulate the building massing. In addition, the recessed windows and balconies are designed to emphasize the building forms consistent with the architectural style. The building materials consist of stucco, asphalt roof shingles, decorative metal railing, brick, and fabric and metal awnings, along with metal accents. The

office/commercial space and live/work units along Civic Park will have storefront windows with a masonry base to enhance and reflect the commercial elements of the community. The recessed openings and articulated building massing further enhances the residential scale of the building along with the awnings, railings and lighting.

Building B is also a mix of contemporary and traditional architecture with more of an emphasis on a subdued traditional residential design. The building is designed around a third passive garden courtyard with pedestrian access to Walnut Avenue. The building materials consist of stucco, asphalt roof shingles, decorative metal railing, and fabric and metal awnings, along with metal accents. The clubhouse, pool facilities and tower will have brick, metal accents, awnings and standing seam metal roofs. The tower at Building B will anchor the development and link the clubhouse amenities to the bridge that connects the buildings on two levels. This contemporary feature element is a clear spanning, transparent connection over Civic Park that consists of metal with contemporary metal railings. The traditional railing combined with accent lighting at the recessed openings reinforce the residential scale of this building's urban edge. The color scheme also has a compatible earth tone palate with color accents at the public facilities and bridge.

Exhibit "E" (Project Development Plans) includes the elevations of the proposed buildings which provide a good perspective the buildings.

*Green Building Practices:* The applicant is proposing to implement various green building features throughout the development, including using low-E, double-insulated tinted glass to minimize heat/cold transfer, low-emitting adhesive paints and finishes, sensor-controlled lighting, and water-efficient landscaping and plumbing fixtures. Bicycle racks will also be provided in the parking garage and within the civic park. In order to encourage implementation of other green building practices, a condition has been included requiring the developer to attempt to integrate Build-it-Green components into the final design to the maximum extent practical.

*Open Space/Landscaping:* The project proposes to develop approximately 19,200 SF of common open space for use and enjoyment by the future residents of development. This 19,200 SF is a combination of the following: Courtyard 1 – 3,568 SF, Courtyard 2 – 3,568 SF, Courtyards 3 – 4,275, the Club House and Fitness Facility – 7,695 SF. The Courtyard areas will be more passive in nature and offers a place for residents to sit, relax and enjoy the surroundings. The Club House and Fitness Facility will include such facilities as a swimming pool, spa, weight room, and lounge chairs. The Club House could be used for meetings and/or booked by residents of the development for small functions or meetings. Pedestrian access to the Club House area will primarily be from within the development, however, access from Beacon Avenue is also proposed through a secure card activated gate. Similar to the R-3 provisions, the Design Team has provided a private open space area for each residential unit as follows: balcony conditions 60 SF/ 6' min. dimension (2<sup>nd</sup> floor and above) and patio condition 100 SF / 10' min. dimension (ground floor units). It should be noted, however, that some ground floor units do not achieve the 100 SF provision. Staff feels that due to the location of these units to either the public sidewalk or Civic Park, these units still meet the intent of providing an open space environment.

Civic Park: The Urban Housing Group is proposing to develop and dedicate a 17,000 SF parcel (Exhibit "E" Sheet C-1 Lot A) to the City as a public Civic Park designed to encourage pedestrian activity adjacent to the development as well as providing a pedestrian connection towards the center of the CBD



Focus Area. The concept design for this Civic Park was reviewed and approved by the Recreation Commission at their meeting on December 3, 2008. The concept design is for a pedestrian friendly space that is passive in nature where people can sit, relax, and enjoy the surroundings. The park is proposed to include a movie screen, artistic water features, art, benches, and other high quality landscaping and site features. The developer proposes to use a small portion of both ends of the park for emergency vehicle access (shown as the “aerial landing zone” on drawing L-7). If approved, this portion of the park must be maintained as a fire lane.

*Parking Structure:* The project includes a parking garage within Building A which is proposed to be accessed off the Beacon Avenue driveway. The parking structure and stalls within are constrained by the size, shape, and structural design of the building. Because of these constraints, the parking does not meet FMC section 8-22009(g)(2), which requires a minimum ten-foot inside wheel radius at changes in drive aisle direction, for minor drive aisles. The applicant has requested a deviation from the strict application of these standards for this development. The deviation is supported by staff and a similar deviation was approved as part of the Palo Alto Medical Building underground garage structure.

The requirement to provide minimum ten-foot inside wheel radii provides areas at drive aisle intersections for vehicles to negotiate right-hand turns with relative ease, without having to impede the travel of oncoming vehicles at the intersection. The applicant's proposal will require vehicles to travel more slowly around corners and may lead, at times, to situations where vehicles may have to back-up to let other vehicles through a turn. Typically, drivers will expect a more constrained layout in a parking garage and adjust their driving accordingly. Additionally, the majority of the parking is for residents, who will learn to safely negotiate the parking garage.

*Street Vacation:* The proposed project and subdivision boundary extends approximately thirty feet into California Street. The applicant is requesting that the City abandon this portion of California Street to facilitate their project, which was initiated by City Council at their January 27, 2009 meeting. The action taken by the City Council on January 27, 2009 was to direct the City Clerk to set and publicly notice a public hearing to be held on March 10, 2009, at which time the City Council will review the vacation to abandon California Street. On January 9, 2007, City Council conditionally vacated this same portion of California Street as part of the previous SummerHill Project (PLN2005-00256). In order to use the thirty-foot wide portion of California Street (12,300 square feet total area), the applicant is required to relocate existing street and utility improvements (see Street Right-of-way Dedication and Improvements) pursuant to Government Code 65402.

The right-of-way for California Street was acquired by the City in 1964, as part of Local Improvement District 6. Because the City acquired fee title to the land, the City can sell or exchange the property on such terms and conditions as it determines appropriate, after the land use as a street has been vacated in accordance with the Streets and Highways Code. In this case, staff recommends (separate report March 10, 2009) that City Council approve the vacation and convey the property to the developer in consideration of the developer's granting the Civic Park (Lot A) to the City as a public park; relocating existing street and utility improvements within the area being vacated; and constructing new public street and utility improvements in California Street, Beacon Avenue and Walnut Avenue.

**Street Right-of-way Dedication and Improvements:** The site is bound on three sides by the existing public streets: Beacon Avenue, California Street, and Walnut Avenue. The CBD Concept Plan Goals include "...to improve streetscape design in the CBD," which includes improving the public streets "to better support vehicular, pedestrian, bicycle, and transit circulation." The following outlines the street right-of-way dedication and improvement requirements of this project.

- **Beacon Avenue** is currently a four-lane commercial service street between Fremont Boulevard and Liberty Street. The CBD Concept Plan suggests that Beacon be reconfigured as a pedestrian-oriented street with a narrower vehicle travel way, on-street parking, and wider sidewalks. The project implements the Concept Plan by reducing vehicle lanes from four lanes to two, one in each direction, incorporating on-street diagonal parking, and installing a minimum ten-foot wide sidewalk.

In order to facilitate the reconfiguration and maintain the minimum ten-foot wide sidewalk in the public right-of-way, the developer will dedicate two feet along the project frontage, increasing the right-of-way width from eighty-six feet to eighty-eight feet. Required street improvements include, but are not limited to: removing the existing curb, gutter, sidewalk, and some pavement; installing new curb, gutter, sidewalk, curb ramps, street trees, and on-street diagonal parking; and modifying existing utilities to conform to the new streetscape. The developer will also modify the existing striping and signing on Beacon, from Liberty Street to west of California Street.

- **California Street** is a four hundred foot long commercial service street between Beacon Avenue and Walnut Avenue. California Street is a five-lane street with a sixty-six foot pavement width. California Street is designated as a reconfigured pedestrian-oriented street in the Concept Plan. The project intends to reduce the street right-of-way and pavement width to accommodate the project design and to accommodate the State Street extension. The street will be narrowed to one lane with on-street parallel parking and a minimum ten-foot wide sidewalk along the project frontage. Two travel lanes (one right turn lane and one combination through/left turn lane) and the existing curb, gutter, and sidewalk are maintained on the opposite side of the street.

Subject to approval of the Street Abandonment, the California Street right-of-way will be narrowed by thirty feet to a new right-of-way width of seventy-two feet. The pavement width will be narrowed from sixty-six feet to forty-three feet (including on-street parking). Required street improvements include, but are not limited to: removing the existing water, sewer, and storm drain mains and installing new mains; removing curb, gutter, sidewalk, and pavement; installing new curb, gutter, sidewalk, curb ramps, and street trees. The developer will also modify the existing striping and signing on California Street.

- **Walnut Avenue** is a four lane divided thoroughfare with an existing right-of-way width of one hundred four feet (104'), including an eighteen foot wide median. The right-of-way widens to one hundred twelve feet (112') before the California Street intersection for the existing right-turn taper. The CBD Concept Plan suggests that Walnut Avenue could become a parkway collector street by incorporating on-street parking and a bicycle lane, while maintaining a landscaped median. The project implements the Concept Plan by narrowing the existing median by three feet, installing a new ten-foot wide sidewalk, and adding on-street parallel parking, while maintaining the existing bicycle lane.

For Walnut Avenue required street improvements include, but are not limited to: narrowing the existing median by three feet, which includes removing the existing curb and installing new curb and pavement; removing the existing curb, gutter, and sidewalk; installing new curb, gutter, curb ramps, and street trees; and modifying existing utilities to conform to the new streetscape. The developer will also modify the existing left-turn pocket and median on Walnut Avenue, south of the California Street intersection to the new right-of-way and pavement width on California Street.

Intersections: To implement the project plan, including revising the streets to conform to the Concept Plan, the developer will revise the public street intersections surrounding the project site. The following outlines the intersection requirements for this project.

- Beacon/California: Narrowing California Street, reducing Beacon Avenue from four lanes to two lanes, and adding on-street parking, each contribute to the need to revise the Beacon/California intersection. The developer will revise the striping, including installing a bulb-out new cross walk and curb ramp along the project frontage.
- California/Walnut: The existing right-turn taper from Walnut Avenue to California Street will be removed, to create a more pedestrian friendly crosswalk and to slow vehicles turning right. New crosswalk striping and a new curb ramp will be installed on the project frontage. The existing left-turn median “nose,” from Walnut onto California, will be shortened and the pavement markings in the driveway of the assisted-living facility across Walnut Avenue will be revised, due to the narrowing of California Street. The existing “pork chop” or pedestrian island on California Street and Walnut Avenue will be removed and replaced with a bulb-out that enlarges the sidewalk area at the corner.
- Beacon/State: Along with new striping and signing along most of Beacon Avenue, new crosswalks will be installed at State Street. The intersection design will accommodate a traffic signal, should one be warranted in the future. An extension and expansion of the sidewalk directly opposite State Street will enhance the entrance to the Civic Park and ensure the diagonal parking does not continue in the intersection.
- Liberty/Beacon: Reducing Beacon Avenue from four lanes to two lanes requires modifications of the striping, starting at Liberty Street. In addition to the striping, the developer will repaint the crosswalks.

Project Specific Standard Details: The CBD Concept Plan suggests enhanced streetscape improvements, including pavement design, street lights, street furniture, and materials to meet the goals of the Concept Plan. The project includes accent pavers, vehicular unit pavers, benches, bollard lights, trash receptacles, bike racks, granite spheres, etc. The City’s street maintenance program is not set up to maintain such non-standard improvements within the public right-of-way. Therefore, the property owners association shall agree to provide maintenance, cleaning, and general upkeep of the project street frontages. A similar maintenance agreement was required of The Benton project on Civic Center Drive.

In addition to the required maintenance agreement, the developer shall provide the City and the future property owners association, plans, details, and specifications for the street improvements that do not

conform to current City standard details. The required street right-of-way dedications and improvements shall be included as part of the subdivision improvement plans.

The City plans to take over maintenance of the Civic Park when the apartments are sold. To cover the future maintenance costs, the City capitalized the annual maintenance and capital replacement costs, plus CPI, to form a \$1.5 million “maintenance and capital replacement endowment” for this project. The applicant has agreed to this amount and timing as described under the Applicable Fees Section of this report.

**Grading & Drainage:** The project site is approximately sixty percent (60%) of the 6.6-acre vacant block bounded by Beacon Avenue, California Street, Liberty Street, and Walnut Avenue. The site is flat, with an average ground elevation between 52 and 53 feet. The project will construct two multi-story condominium buildings, one of which includes a multi-story parking garage. Grading for the project consists primarily of the foundation excavation necessary for the buildings.

**Storm Drainage:** The project site is upstream from drainage facilities designated by FEMA as special flood hazard areas (Line D, Zone 5). The project storm drain system shall be designed such that there is no increased flooding hazard downstream of the project site. On-site storm water detention is proposed to prevent increased runoff from the project site. The design of Building A includes two concrete vaults under the first floor of the parking garage. The vaults will store storm water runoff and slowly discharge the detained water. The project storm drain design and hydrologic/hydraulic calculations are subject to review and approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

**Urban Runoff Clean Water Program:** The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in storm water runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The project intends to meet the quantitative storm water treatment requirements by installing storm water treatment vaults in the streets and constructing biofiltration planters within and alongside the residential buildings. The biofiltration planters are designed to store a certain volume of runoff, infiltrate the stored runoff into the ground, and facilitate biological processes to remove pollutants. The proposed vaults will contain filter cartridges designed to remove anticipated pollutants from storm runoff. Due to the special maintenance requirements of the storm water treatment vaults, staff has included a condition of approval requiring the developer and design team to work with City staff on alternate treatment devices, which have less onerous maintenance requirements. The storm water treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to final map approval.

As required by the Alameda Countywide NPDES Municipal Storm Water Permit, the property owners shall enter into a maintenance agreement for the long-term operation and maintenance of storm water treatment measures. The agreement will require the ongoing maintenance of the facilities, including periodic replacement of media filter cartridges in the five storm water treatment vaults. The property

owners shall also integrate a sidewalk and pavement sweeping program to help prevent debris and other pollutants from entering storm drains.

**Utility Agencies and Districts:** The project application was referred to the local utility agencies, districts, and companies. Review comments were provided by the Alameda County Water District (ACWD) and the Alameda County Public Works Agency (ACPWA) acting as the Alameda County Flood Control and Water Conservation District. Both agencies had recommendations regarding the project. Recommendations are as follows:

**Alameda County Water District:** ACWD will require the water system be designed according to ACWD standards. ACWD also will require redundant master meters to serve this project, in order to minimize service disruptions during repair or maintenance of the public water mains or service lines. Finally, ACWD recommended that the City require sub-metering of all units served by the master meter. Sub-metering provides the unit owner/occupant and the property owners association the ability to see how much water an individual unit is using. Sub-metering may encourage water conservation and will provide a mechanism for the property owners association to bill units based upon actual water consumption. Staff has included a condition of approval requiring sub-metering off all units.

**Alameda County Public Works Agency:** ACPWA provided comments which pertained to: preventing storm water pollution; establishing the hydraulic criteria for the storm drain system, and preventing increased runoff from the project site, which may require on-site or off-site storm water detention or storm drain upgrades. Conditions of approval have been included to address the ACPWA comments.

**Applicable Fees:** This project will be subject to Citywide Development Impact fees. These fees include fees for fire protection, park facilities, parkland dedication in lieu, capital facilities and traffic impact. The project proposes to dedicate and construct the Civic Park to fulfill the park facilities and park land dedication requirements in lieu of paying full impact fees. As part of the Precise Planned District Rezoning P-2009-9 the Owner has also agreed to contribute \$1.5 million dollars to the City when the City takes over maintenance of the Civic Park when the units are sold. The amount to be contributed will increase at the rate of the Consumer Price Index (CPI) in the San Francisco-Oakland-San Jose area, starting five years after the acceptance of the Civic Park by the City. The contribution will be used for a Maintenance and Capital Replacement Funding Source for the maintenance and improvements of Civic Parks within the Focus Area of the CBD due to the relatively high cost of maintaining these spaces (Exhibit "1" - Conditions A-24, A-25 & A-26). While the development is initially a rental project the owner will be required to maintain the park to the specifics and satisfaction of the City through an agreement they will enter into with the City (Exhibit "1"- Condition A-10).

**Stimulus Package:** On March 3, 2009 the City Council reviewed a report which outlined various incentives in an effort to try to locally stimulate our business and developers during these difficult economic times. One of the incentives outlined in the report related to reducing the development impact fees assessed to a project within the Central Business District by 25% to encourage development within the core area of the City of Fremont. The Urban Housing Group Project is one project that could take advantage of the development impact fee incentive. Staff has been advised by the applicant that some type of incentive program is required for the project to move forward to the building permit phase.

**Planning Commission Recommendation:** On January 22, 2009 the Planning Commission reviewed the project and requested that Economic Development staff to attend the next meeting to discuss the retail portion of the proposed project. The Commission requested that Economic Development staff outline the retail strategy for the CBD and how this project fit into the overall vision/strategy for the CBD. At the February 12, 2009 Planning Commission meeting, Economic Development staff advised that the subject site was not a strong retail site and that more roof-tops in the CBD would eventually enhance the vibrancy/activity of the CBD. The Commission suggested that the proposed 1,200 square feet of office/commercial space be allowed to be converted to a Live/Work unit if a viable tenant could not be found (Exhibit 1 A-3). Therefore, on a 5-0-1-0-1 (with one Commissioner abstaining and one seat vacant) the Planning Commission recommended that the City Council approve the project.

**Environmental Determination:** An Initial Study, Draft Negative Declaration, and Mitigation Monitoring Plan have been prepared for this project. The environmental analysis identified concerns regarding potential impacts to air quality, biological resources, and noise. The Draft Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval for this project. A more detailed description of the potential impacts is provided within the Initial Study (Informational 1) for the project, which is included as an enclosure. Because the project could have significant environmental impacts, a Draft Mitigated Negative Declaration was prepared and circulated for public review for 20 days from December 20, 2008 through January 19, 2009 in accordance with the requirements of the Californian Environmental Quality Act (CEQA) (Exhibit "A"). The applicant has agreed to implement mitigation measures that would reduce the impacts the project may have to a less-than-significant level. These mitigation measures have been included as conditions of approval for the project. As such, staff recommends the Commission recommend that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as presented in Exhibit "A".

**Public Notice and Comment:** A total of 202 notices were mailed to the owners and occupants of all properties within 300 feet of the site on February 26, 2009. A Public Hearing Notice was also published in *The Tri-City Voice* on the same date. No comments from the public were received prior to the publishing of this report.

In addition, courtesy signs were posted on Walnut Avenue and Beacon Avenue since November 2008, indicating that the City was reviewing the project and requesting public comment. Signs will be removed upon completion of the City Council hearing for this project.

**ENCLOSURES:**

- Draft Resolution
- Draft Ordinance
- Exhibit "A"- Mitigated Negative Declaration & Mitigation Monitoring Plan
- Exhibit "B"- (Intentionally omitted)
- Exhibit "C"- Central Business District Concept Plan Amendment
- Exhibit "D"- Rezoning Exhibit
- Exhibit "E"- Project Development Plans/Vesting Tentative Tract Map 7986 and Preliminary Grading Plan

Proposed Project Condition Exhibits:

Exhibit 1 Findings and Conditions of Approval for Precise Planned District P-2009-9

Exhibit 2 Findings and Conditions of Approval for Vesting Tentative Tract Map 7986

Exhibit 3 Findings and Conditions of Approval for Preliminary Grading Plan

Informational Items:

1. Initial Study – Environmental Document
2. SummerHill Homes 2006 - Approved Site Plan
3. Planning Commission Approved Minutes – January 22, 2009
4. Planning Commission Draft Minutes – February 12, 2009

**RECOMMENDATIONS:**

1. Hold public hearing.
2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as shown in Exhibit “A”, and find that this action reflects the independent judgment of the City of Fremont.
3. Find PLN2009-00009 is in conformance with the relevant goals contained in the Central Business District Concept Plan as enumerated within the staff report.
4. Adopt a resolution approving PLN2009-00009 to amend the Central Business District Concept Plan in conformance with Exhibit “C” (CBD Concept Plan Amendment).
5. Waive full reading and introduce an ordinance approving Precise Planned District P-2009-9, as shown on Exhibit “D”, and adopting Exhibit “E” (Project Development Plans), together with the findings and conditions contained in Exhibit “1” as the precise Plan for P-2009-9;
6. Approve Tentative Tract Map 7986, and Preliminary Grading Plan as depicted in Exhibit “E” (Vesting Tentative Tract Map 7986 and Preliminary Grading Plan), based on the findings and subject to the conditions of approval contained in Exhibit “2” and Exhibit “3”, respectively.
7. Direct staff to prepare and the City Clerk to publish a summary of the above ordinance outlined in recommendation No. 5.

## 5.2 GENERAL VACATION OF A PORTION OF CALIFORNIA STREET IN THE CENTRAL PLANNING AREA

**Public Hearing (Published Notice) to Consider a General Vacation to Abandon a Portion of California Street Located Between Beacon Avenue and Walnut Avenue in the Central Planning Area (PLN2009-00009) and if Approved to Authorize Conveyance of the Vacated Portion of the Street to the Urban Housing Group**

### **Contact Person:**

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**Executive Summary:** The proposed general vacation pertains to a portion of California Street in the Central Planning Area. The project applicant, Urban Housing Group Inc., has requested that a portion of California Street be vacated as a public street and subsequently incorporated into their project design. The Central Business District Concept Plan (Concept Plan) envisions California Street to be redesigned as a pedestrian-oriented street. Such a vacation would provide for the pedestrian-oriented street design envisioned for the California Street in the Concept Plan. The Urban Housing project will construct a public park through the site extending from State Street between Beacon Avenue and Walnut Avenue. This new public park will provide an additional pedestrian link for the area, thereby improving the overall pedestrian network.

Staff recommends that the City Council approve the proposed vacation of this portion of California Street, subject to conditions, and authorize the City Manager to convey the vacated portion of the street to the Urban Housing Group. The vacation would be effective with the recordation of the Final Map for the Urban Housing Project and satisfaction of other conditions, including execution of a park maintenance agreement.

**BACKGROUND:** The proposed general vacation would abandon the northern half (two lanes), an approximately 30 foot by 324 foot section totaling approximately 12,300 square feet, of California Street between Beacon Avenue and Walnut Avenue located directly adjacent (south of) the proposed Urban Housing development project in the Central Business District (CBD). The California Street right-of-way is currently 102 feet wide and improved with four lanes, a parkway strip and sidewalk on the both sides, and designated as a collector road in the Fremont General Plan. The Urban Housing project, also to be reviewed by the City Council on March 10, 2009, would reconfigure California Street into a three-lane (two eastbound, toward Walnut Avenue, and one westbound, toward Beacon Avenue) 72 foot wide public right-of-way collector street with parkways and sidewalks on both sides and on-street parking on the north (project) side only. On February 12, 2009, the Planning Commission found that the proposed vacation to be consistent with the General Plan.

On January 9, 2007, the City Council conditionally vacated this same portion of California Street as part of the previous SummerHill Project (PLN2005-00256). Since the SummerHill Final Map was never recorded and other conditions were not met, the vacation of the street did not occur.



City Council initiated this vacation procedure on January 27, 2009.

**Rationale(s) for Vacation:** California Streets and Highways Code (SHC) Section 8324 states that a general vacation may be ordered by the City Council if it finds that the street is unnecessary for present or prospective public use. The proposed vacation meets this criterion, as the surrounding road network has the capacity to accommodate the flow of traffic in the area. Also, a public park providing for enhanced pedestrian circulation within the CBD would extend through the Urban Housing Project, from Beacon Avenue to Walnut Avenue. It should be noted that the existing developed properties on California Street will retain access and use of the remaining portion of California Street.

Further, SHC Sections 8314 and 892 require that prior to abandoning a right-of-way, the governing body must determine that the right-of way or parts thereof are not useful as a non-motorized transportation facility. As part of the California Street reconfiguration (after the requested portion is vacated), a new public sidewalk would be constructed, thereby providing a non-motorized transportation facility. Further, the addition of the public park through the project site (extended from the State Street and Beacon Avenue intersection to Walnut Avenue) would provide an additional non-motorized transportation facility accessible to the public. As such, the proposed general vacation would not eliminate any existing non-motorized transportation facilities.

**General Plan Consistency:** As set forth in California Streets and Highways Code (SHC) Section 8313, if a proposed street vacation is within an area for which a General Plan is adopted, the General Plan must be considered prior to taking action on the vacation. Government Code Section 65402 sets forth the procedure for considering the General Plan, which includes the Planning Commission determining if the proposed general street vacation conforms to the General Plan. On February 12, 2009, the Planning Commission reviewed the proposed general vacation and found it consistent with the General Plan.

The proposed general vacation of a portion of California Street is consistent with General Plan Fundamental Goal 10: "Public services responsibly managed and equitably distributed throughout the City" because the reconfigured California Street right-of-way would be an appropriate size and configuration to accommodate existing and future vehicular and pedestrian traffic while improving pedestrian accessibility within the CBD.

**Environmental Review:** A Mitigated Negative Declaration was prepared and circulated for the Urban Housing Project, which included the vacation of a portion of California Street being reviewed through this report.

**Public Hearing Notice:** In accordance with State law, notice of the hearing on the proposed general vacation was published in the *Tri-City Voice* for two consecutive weeks on February 18 and 25, 2009, and by conspicuously posting signs along the street right-of-way of California Street for a two-week period beginning February 23, 2009. Additionally, notice of this public hearing was mailed to all property owners and tenants within 300 feet of the project site.

**Notification to Utility Companies:** All utility companies providing service in the project area have been notified about the proposed general vacation. No objection to the vacation has been raised.

**Disposition of Vacated Area:** The City owns the property underlying California Street in fee. State law authorizes the Council to dispose of property owned by the City that underlies a vacated street upon a finding that the property is no longer needed by the public. The Council may dispose of the property in the manner and on such terms and conditions as it approves. As previously discussed, the vacated area is no longer needed by the public. Staff recommends that council authorize the City Manager to execute a deed conveying the vacated portion of California Street to the Developer. The conveyance would be in consideration of the Developer's agreement to: (1) dedicate an approximately 1000 square foot portion of its Beacon Street frontage to City for street purposes, (2) maintain the Civic Park, including the emergency vehicle access portion, at its cost during the period of time the project is a rental project, and (3) to make a contribution to the City in the amount of \$ 1,500,000, plus consumer price index adjustments, for Civic Park maintenance and capital replacement purposes when the project becomes a for sale project.

**ENCLOSURE:** Exhibit A: Draft resolution, plat, and legal description vacating a portion of California Street

**RECOMMENDATIONS:**

1. Hold public hearing.
2. Find the proposed General Vacation (PLN2009-00009), as depicted and described on Exhibit "A" is in conformance with the General Plan, for the reasons stated in the body of this report.
3. Find PLN2009-00009, as depicted and described on Exhibit "A," fulfills the applicable criteria set forth in Section 8324 of the Streets and Highways Codes in that the portion of California Street to be vacated is not now, nor will it in the future, be required for public street purposes.
4. The General Vacation shall conform to Exhibit "A." all conditions set forth herein, and all the conditions of approval of Planned District P-2009-9.
5. Adopt a resolution rescinding prior Council resolution 2007-02 and conditionally vacating the portion of California Street as described and depicted in Exhibit "A. The vacation is conditional and shall not be recorded and shall not be effective until all of the following have occurred:
  - A. The Urban Housing Group's Walnut Avenue Project Final Tract Map 7986, including the dedication to the City of an approximately 1000 square foot parcel of land along Beacon Avenue, is approved by the City Council and is ready to be recorded.
  - B. The Developer has executed and delivered to the City an irrevocable offer of dedication in fee for the Civic Park an approximately 17,600 square foot parcel of land between Beacon Avenue and Walnut Avenue for park and emergency vehicle access purposes.
  - C. The Developer has executed and delivered an agreement satisfactory to the City Attorney to provide maintenance for the Civic Park during the time that the project is a rental project and to provide a cash contribution in the amount of \$1,500,000, plus consumer price index adjustments, to be used for maintenance and capital replacement purposes when the project becomes a for sale project.
  - D. The Developer has executed and delivered to City, at no cost to City, an easement granting the City a temporary roadway and utility easement to allow the public and public utility agencies the right to use and to maintain the roadway, sidewalk and utilities existing in the vacated portion of California Street until such time as the Developer removes and reconstructs the road, sidewalk and utilities as permitted by the City and other public agencies or utilities.

6. Find that the vacated area is not needed by the public and authorize the City Manager or designee to execute a deed conveying the vacated portion of California Street as shown on Exhibit "A" to Urban Housing Group after the conditions to the street vacation have been satisfied.
7. Direct that the resolution vacating a portion of California Street, the Urban Housing Group Walnut Avenue Project Final Tract Map 7986, the deed conveying title to the vacated portion of the California Street right-of-way to the Developer, the irrevocable offer of dedication of the area designated as Civic Park for park and emergency vehicle access purposes, and the temporary easement allowing public use of the vacated California Street shall be deposited into an informal escrow with the City and shall be recorded together in the following order:
  - a. Resolution vacating a Portion of California Street
  - b. Deed conveying the vacated portion of California Street to the Urban Housing Group
  - c. Final Map for the Urban Housing Group Walnut Avenue Project Tract 7986
  - d. Irrevocable Offer of Dedication from Developer to City of the area designated as Civic Park for park and emergency vehicle access purposes
  - e. Temporary Easement from the Urban Housing Group to the City for public use of the vacated portion of California Street.

## **6.1 Report Out from Closed Session of Any Final Action**

## 7.1 CONSIDERATION OF “ENHANCED LANDSCAPING” DESIGN ALTERNATIVE FOR THE WASHINGTON BOULEVARD / PASEO PADRE PARKWAY GRADE SEPARATION PROJECT

### City Council Consideration to Add Enhanced Landscaping for the Washington Boulevard / Paseo Padre Parkway Grade Separation Project at a Cost of \$ 1,171,245

#### Contact Person:

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**Executive Summary:** In October 2003, the Council approved staff’s recommendation to use a “Base Landscaping” design for the Washington Boulevard / Paseo Padre Parkway Grade Separation Project and further directed staff to design and include in the bid documents an “Enhanced Landscaping” design for the project as an alternate bid. The decision on which level of landscaping would be installed would then be made at the time of contract award if sufficient funds were available. Bids were opened in February 2007. DeSilva Gates-Brosamer was the lowest responsive and responsible bidder with a base bid price of \$48,151,286, including a bid amount of \$1,056,675 for Base Landscaping, and an alternate bid for Enhanced Landscaping of \$1,410,920, which was \$354,245 more than the bid with Base Landscaping. Based on staff’s recommendation, the Council awarded the contract with the Base Landscaping but asked staff to return to the Council toward the end of the project for them to consider the Enhanced Landscaping once staff had a better understanding if it could be included within the available funding. The alternate bid amount was valid only up to the time of award and had to be reevaluated by the contractor if selected at a later date. The contractor’s revised alternate bid for the Enhanced Landscaping has now increased from \$1,410,920 to \$2,227,920, or \$1,171,245 higher than the Base Landscaping. Although there is sufficient funding to implement the Enhanced Landscaping for the project, the cost of maintaining the Enhanced Landscaping, which is estimated to be approximately \$45,000 annually, is approximately three times as much as maintaining the Base Landscaping. The City has very limited resources to fund landscape maintenance because the funding comes from the City’s General Fund. Therefore, due to the City’s ongoing budget concerns, staff is recommending the Council not add the Enhanced Landscaping to the Grade Separation Project.

**BACKGROUND:** In October 2003, staff made a presentation to Council on the Landscape, Hardscape and Aesthetic features of the Grade Separation Project. The presentation included three levels of landscape design, “Bare Bones”, “Base”, and “Enhanced”. Council concurred with staff’s recommendation to proceed with the Base Landscaping but directed staff to include an alternative bid item for the Enhanced Landscaping to see if it could be included within the project budget. Since the Enhanced Landscaping plan required replacing some of the Base Landscape features with enhanced features, the bids were set up so that the alternate bid for the Enhanced Landscaping replaced the cost of the bid for the Base Landscaping. In February 2007, the low bidder, DeSilva Gates-Brosamer, bid \$1,410,920 for the Enhanced Landscaping. This was \$354,245 more than their bid for the Base Landscaping.

Due to the complexity of the project and the potential delay claims that could occur during the railroad and utility relocations, staff was concerned that the budget might not be sufficient to support the additional cost of Enhanced Landscaping when it came time to award the contract. Therefore, staff recommended, and the Council agreed, to revisit the decision of Enhanced Landscaping when the project was closer to completion when a clearer budget picture was available, but prior to the start of the landscaping work.

**Discussion:** The Base Landscaping provides a reasonable level of aesthetics for the project. Along Washington Boulevard west of the bridge, the Base Landscaping includes palm trees in street tree planters, and a 200-foot long band of low shrubs and flowering plants along the sidewalk. At Driscoll and Osgood Roads, the base planting includes New Bradford Pear trees in the east corners of the intersection and Zelkova Village Green trees along the Driscoll and Osgood Roads and in the medians. All slopes and the area between the trees in the Driscoll median will be covered with a red fescue that does not require mowing. See the enclosed Exhibits 1 and 2 for the Base Landscaping of Washington Boulevard and Driscoll Road/Osgood Road respectively. Along Paseo Padre Parkway, the Base Landscaping includes a median treatment with cobble stones in the lowest section of the underpass, between the BART Bridge and the Utility Bridge where plants will not easily grow. On either side of the cobble stone area, the median will be landscaped with oak trees and redbud trees. The area between the trees will be covered with red fescue grass. The slopes behind the sidewalks will have two varieties of native oak trees and will also be covered with the red fescue. See enclosed Exhibit 3 for Paseo Padre Parkway Base Landscaping. In addition, all of the hardscape features are included in the Base Landscaping, including special texture on the retaining walls and special lighting and fencing on the Washington Boulevard bridge.

The Enhanced Landscaping extends the low flowering shrubs along the west side of the Washington Boulevard bridge with approximately another 300 feet of shrub planting, and additional shrubs and flowering plants at the easterly corners of Washington Boulevard/Driscoll/Osgood Road intersections. A row of flowering primrose jasmine shrubs will also be added between the trees behind the easterly sidewalk at Osgood Road with low flowering shrubs replacing the red fescue grass in the Driscoll Road and Osgood Road medians. See enclosed Exhibits 1A and 2A for the Enhanced Landscaping of Washington Boulevard and Driscoll Road/Osgood Road respectively. Along Paseo Padre Parkway, the red fescue in the median will be replaced with a “meandering cobble stream design” with low accent and flowering shrubs along with boulders in the “stream” between the shrubs. On the side slopes behind the northerly sidewalk and portions of the southerly sidewalk, the red fescue will be replaced with flowering primrose jasmine shrubs. See Exhibit 3A for the Enhanced Landscaping of Paseo Padre Parkway.

When staff asked the contractor to confirm the full landscaping price, including the Enhanced Landscaping, staff was informed the cost would now be \$2,227,920 which is \$1,171,245 higher than the Base Landscaping in the contract. The reason for such a large increase from the contractor’s original alternate bid is that the contractor recently realized they had made an error in their original bid. The contractor had assumed that the cost of the Enhanced Landscaping alternative in their bid would be in addition to their cost for the Base Landscaping. However, the contract documents call for the alternate bid for Enhanced Landscaping to be the total cost of installing both the base landscaping features and the enhanced features. Therefore, the contractor significantly under bid the original Enhanced Landscape Alternative. With completion of almost 75% of the project, staff believes there is sufficient budget to implement the Enhanced Landscaping by issuing a Contract Change Order to the contractor. However,

since the Enhanced Landscaping includes a great number of shrubs and flowering plants, maintaining it requires approximately three times as much effort as the Base Landscaping, or approximately \$45,000 per year. Project funds can not be used for maintenance purposes since the City funding is primarily Redevelopment funds. The City has limited resources to fund landscape maintenance since the funding comes from the City's General Fund. Therefore, due to the City's ongoing budget concerns, staff is recommending the Council not add the Enhanced Landscaping to the Grade Separation Project. Staff believes the Base Landscaping included in the project will still provide for an aesthetically pleasing project.

Any unused Redevelopment funds remaining at the end of the project will be returned to the Redevelopment Agency account.

**ENCLOSURES:** Exhibits 1, 1A, 2, 2A, 3 and 3A

**RECOMMENDATION:** Direct staff to continue to install the Base Landscaping included in the current construction contract for the Washington Boulevard/Paseo Padre Parkway Grade Separation Project and not issue a contract change order to add Enhanced Landscaping.

## 7.2 EXTENSIONS TO EXISTING BUILDING PERMITS AND APPLICATIONS

### Consideration of an Uncodified Ordinance of the City of Fremont Authorizing Extensions to Existing Building Permit Applications and Building Permits

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**Executive Summary:** This agenda item introduces an uncodified ordinance that provides procedures to allow unexpired building permits and unexpired applications for building permits to be extended. Creating extension provisions will provide relief to the development community who are experiencing longer delays in project completion due to the inability to secure financing.

**BACKGROUND:** On November 10, 2008, approximately four developers met with staff to discuss the status of their applications, many of which were entitled and plan checked but waiting for building permits to be issued. Permit and impact fees are due at the time of building permit issuance. The developers expressed concern that the economic downturn has created challenges to secure appropriate funding for development projects. Increased costs associated with financing coupled with changing building codes further exasperate their financial difficulties.

During the current economic crisis, these and other developers are faced with increased difficulties in obtaining construction loans and financing for their approved projects. Consequently, they have not been able to or have chosen not to pull their building permit. The response to this economic reality, however, has unintended financial consequences. Building permit applications and permits expire after 180 days of inactivity.

At the City Council's December 9, 2008 meeting, the Council considered 13 requests from project applicants to grant one year extensions allowed by Fremont Municipal Code (FMC) section 7-1721.D105 in order to delay the application of the City's new fire apparatus access standard. Although the City Council granted the request, members of the development community who were in support of the proposed extension addressed the Council requesting an additional two year extension for pending and issued building permits. Because this request was not under consideration by the City Council, staff was directed to meet with the concerned speakers to understand their needs and to properly agendize their request at a subsequent meeting. Staff met with the group and conducted internal staff meetings that resulted in the preparation of a draft ordinance. This ordinance would permit the filing of an application to extend the life of unexpired building permit applications and unexpired building permits.

#### **Building Permit Applications:**

The draft ordinance would allow the City's Building Official to extend an unexpired building, mechanical, plumbing or electrical permit application to March 1, 2010 if the permit holder submits a written request. The March 1, 2010 "end date" was selected because it is anticipated that the new California Building Code (CBC) would be approved by the State Legislature towards the early to middle



part of 2010. Because staff is unaware of anticipated changes to the CBC, a one-year extension is preferred, understanding that staff could always return to the Council with another amendment should the 2010 CBC changes be insignificant.

**Building Permits:**

The draft ordinance would allow the City's Building Official to extend an unexpired building, mechanical, plumbing or electrical permit within the same timelines recommended for building permit applications. Since projects that could take advantage of this ordinance section could be in a state of partial construction, conditions of extension approval are included to ensure that developments are properly secured. In this regard, a temporary closure plan would be required. Assuming the Ordinance goes into effect in late April 2009, any extension approved pursuant to these provisions would realize approximately a one-year extension.

**Effect on Building Permits and Applications for Building Permits:**

Although there are hundreds of unexpired applications for building permits, staff expects the majority of these projects will continue on course to completion without taking advantage of the extension provisions. The Ordinance is intended to address the minority few that are typically the larger developments that require greater financing needs. Therefore, staff does not anticipate there will be a large demand for extensions.

**Customer Outreach:**

Once the Ordinance is adopted, staff will notify the Department's list of concerned parties inviting them to apply for an extension. This includes speakers who have been before the Council and community members who have met with staff. The public counter staff will also be posted informing the customers of the latest extension provisions. There is currently no cost to apply for an extension to an application for building permit and building permit.

**ENCLOSURE:** Draft Ordinance

**RECOMMENDATIONS:**

1. Hold the public hearing.
2. Find the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15061 (B) (3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
3. Waive full reading and introduce the uncodified ordinance.
4. Adopt a motion directing the City Attorney to prepare a summary of the ordinance and the City Clerk to post and public the summary in accordance with Government Code Section 36933 (C)(1).
5. Direct the Clerk to publish notice of a public hearing to consider adoption of the ordinance in accordance with Government Code Section 6066 and 50022.3.

**8.1 Council Referrals – None.**

**8.2 Oral Reports on Meetings and Events**

## ACRONYMS

ABAG .....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA .....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA .....	General Plan Amendment
ACFCD .....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA .....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD .....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC .....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS .....	California Public Employees' Retirement System	MTC .....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD .....	Community Development Department	NLC .....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES .....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO .....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC .....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC .....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG .....	Compressed Natural Gas	PWC .....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS .....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC .....	California State Association of Counties	RFQ .....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP .....	Regional Occupational Program
DEIR .....	Draft Environmental Impact Report	RRIDRO .....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC .....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR .....	Environmental Impact Report (CEQA)	TCRDF .....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF .....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA .....	Federal Emergency Management Agency	USD .....	Union Sanitary District
FFD .....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC .....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD .....	Fremont Police Department	ZTA .....	Zoning Text Amendment
FRC .....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE**

<i><b>Date</b></i>	<i><b>Time</b></i>	<i><b>Meeting Type</b></i>	<i><b>Location</b></i>	<i><b>Cable Channel 27</b></i>
March 17, 2009		Cancelled		
March 24, 2009	6:00 p.m. 7:00 p.m.	Special Work Session; City Council Meeting	Council Chambers	Live
March 31, 2009 (5 <sup>th</sup> Tuesday)		No Meeting		
April 7, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 14, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 21, 2009	TBD	Work Session	Council Chambers	Live
April 28, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 4, 2009 (Monday)	4:00 p.m.	Joint City Council/FUSD Mtg.	Council Chambers	Live
May 5, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 12, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 19, 2009	TBD	Work Session	Council Chambers	Live
May 26, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 2, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 9, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 16, 2009	TBD	Work Session	Council Chambers	Live
June 23, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 30, 2009 (5 <sup>th</sup> Tuesday)		No Meeting		